

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL E. JACQUES,
Plaintiff,

v.

M. DOBBS, et al.,
Defendants.

No. 2:24-cv-00478-EFB (PC)

ORDER TO SHOW CAUSE

Plaintiff is a state prisoner proceeding without counsel in this action brought pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). Plaintiff has also filed an application to proceed in forma pauperis. ECF No. 3. Because of discrepancies between plaintiff's IFP application and institutional trust account statement, the court must determine the propriety of granting plaintiff IFP status before it can screen the complaint under 28 U.S.C. § 1915A.

28 U.S.C. § 1915(a) allows a person to proceed IFP after she submits to the court an affidavit that includes a statement of all of the person's assets and a statement that the person cannot pay the filing fee. Additionally, a prisoner seeking to proceed IFP must also submit a certified copy of their prison trust account statement for the six months prior to the filing of the complaint. 28 U.S.C. § 1915(a)(2). An IFP affidavit "is sufficient where it alleges that the affiant cannot pay the court costs and still afford the necessities of life." *Escobedo v. Applebees*, 787

1 F.3d 1226, 1234 (9th Cir. 2015) (considering the impact of the filing fee on the budget of the
2 applicant in determining that she should have been granted IFP status). Where the IFP applicant
3 is a prisoner, however, courts recognize that most necessary life expenses are covered by the
4 government. *Kennedy v. Huibregtse*, 831 F.3d 441, 443 (7th Cir. 2016) (noting that plaintiff's
5 entire \$2000 in assets were available to him to pay for his lawsuit because the prison paid for his
6 food, clothing, shelter, and medical care).

7 In this district, plaintiffs generally seek IFP status by submitting a form application. E.D.
8 Cal. Website, <http://www.caed.uscourts.gov/caednew/index.cfm/forms/civil/> (last checked June
9 17, 2024). Relevant to this case, the form asks the applicant to list all income from the prior 12
10 months, any money in a bank account, and any other assets of value. The form states that
11 responses are provided "under penalty of perjury."

12 Plaintiff's IFP application appears on an earlier iteration of the current form. ECF No. 2.
13 It includes substantially the same information, however, including – critically – the statement that
14 responses are provided under penalty of perjury. *Id.* Plaintiff signed her IFP application on
15 January 22, 2024. *Id.* In her responses, she wrote that she had received no money from any
16 source in the prior 12 months. *Id.* at 1. She also wrote that she had no cash, including in a
17 checking or savings account. *Id.* at 2.

18 The court cannot reconcile plaintiff's statements with the trust account statement provided
19 by plaintiff's institution. ECF No. 4. That document shows that plaintiff had a balance of
20 \$1,848.43 on the date she signed the IFP application. *Id.* Among the transactions listed are the
21 following deposits: (1) \$2,012.76 on October 13, 2023; (2) \$300 on November 11, 2023; (3) \$200
22 on November 12, 2023; (4) \$200 on December 28, 2023; and (5) \$100 on December 30, 2023.
23 *Id.*

24 28 U.S.C. § 1915(e)(2)(A) provides: "Notwithstanding any filing fee, or any portion
25 thereof, that may have been paid, the court shall dismiss the case at any time if the court
26 determines that the allegation of poverty is untrue[.]" The statute was amended in April of 1996;
27 it had previously provided that the court "*may* dismiss the case if the allegation of poverty is
28 untrue[.]" 28 U.S.C. § 1915(e) (1996) (emphasis added).

1 Courts have not been totally uniform in their application of § 1915(e)(2)(A), but a close
2 reading of the cases applying the statute reveals consistent considerations guiding the courts'
3 analyses. The Ninth Circuit provided a starting point in *Escobedo*, 787 F.3d at 1234 n.8, stating
4 that, to dismiss a complaint under § 1915(e)(2)(A), the court must find that the allegation of
5 poverty was not just inaccurate, but made in bad faith. Consistent with that approach, other
6 courts have concluded that, where the allegation of poverty is untrue but there is no showing of
7 bad faith, the court should impose a lesser sanction than outright dismissal with prejudice, for
8 example, revoking IFP and provide a window for the plaintiff to pay the filing fee, or dismissing
9 without prejudice. *Camp v. Oliver*, 798 F.2d 434, 438 (11th Cir. 1986); *Mahone v. Pierce Cnty.*,
10 No. C14-5665 BHS-KLS, 2014 U.S. Dist. LEXIS 170997, at *7-8 (W.D. Wash. Oct. 21, 2014);
11 *Jacobsen v. Am. Honda Motor Co.*, No. CV 10-134-PK, 2010 U.S. Dist. LEXIS 80060, at *4-9
12 (recommending dismissal without prejudice where plaintiff failed to disclose income on IFP
13 application but the evidence did not conclusively show intentional misrepresentation).

14 Courts that have declined to dismiss an action under § 1915(e)(2)(A) have generally based
15 their decisions on the actual poverty of the plaintiff, despite a technical inaccuracy in the IFP
16 application, and the absence of a showing of bad faith. *Escobedo*, 787 F.3d at 1234 n.8 (dismissal
17 not warranted where plaintiff claimed to be paying a certain amount in “rent” despite actually
18 owning her home, because her mortgage payment was equivalent to a payment of rent and
19 plaintiff owned no equity in the home); *Camp*, 798 F.2d at 438-49 (reversing district court’s
20 dismissal where there was no finding that plaintiff’s inaccuracy foreclosed IFP eligibility);
21 *Hammler v. Alvarez*, No. 18-CV-326-AJB(WVG), 2019 U.S. Dist. LEXIS 22837, at *2-5 (S.D.
22 Cal. Feb. 13, 2019) (dismissal not warranted where plaintiff failed to reveal over \$1000 in
23 settlement funds because such funds were immediately and entirely used to pay plaintiff’s
24 restitution fines); *Ruffin v. Baldwin*, No. 18-cv-1774-NJR, 2018 U.S. Dist. LEXIS 203411, at *7-
25 10 (S.D. Ill. Nov. 30, 2018) (dismissal not warranted where plaintiff did not list over \$4000 in
26 settlement funds received in the six months preceding the application because the funds were
27 revealed on the accompanying trust account statement (indicating no intent to conceal them) and
28 because, by the date of the application, plaintiff had spent the money and was thus eligible for

1 IFP); *Griffin v. Moon*, No. 1:12-cv-02034-LJO-BAM (PC), 2016 U.S. Dist. LEXIS 130812, at *7
2 (E.D. Cal. Sept. 23, 2016) (dismissal not warranted where plaintiff had received funds between 8
3 and 20 years prior to his IFP application and there was no evidence that he currently had such
4 funds).

5 On the flip side, courts routinely dismiss with prejudice cases upon finding that the
6 plaintiff has intentionally withheld information that may have disqualified her from obtaining IFP
7 status or has otherwise manipulated her finances to make it appear that she is poorer than she
8 actually is; i.e., where the facts show that the inaccuracy on the IFP application resulted from the
9 plaintiff's bad faith. Thus, in *Kennedy v. Huibregtse*, 831 F.3d 441, 442-44 (7th Cir. 2016), the
10 Seventh Circuit affirmed the district court's dismissal with prejudice of a complaint pursuant to §
11 1915(e)(2)(A) where the plaintiff failed to reveal that he had a trust account outside of prison,
12 managed by a friend, containing about \$1400 at the time of the plaintiff's IFP application. The
13 court rejected plaintiff's claim that he did not know the balance of the account at that time and
14 thought it had only about \$10, because he spent over \$600 from it just before and after the
15 application. *Id.* at 444. Importantly, the court found that, even if the district court would have
16 granted the plaintiff IFP status if it had known about the trust account,

17 hiding assets is not a permissible alternative to seeking the judge's assistance. An
18 applicant has to tell the truth, then argue to the judge why seemingly adverse facts
19 (such as the trust fund in this case) are not dispositive. A litigant can't say, "I
know how the judge *should* rule, so I'm entitled to conceal material information
from him."

20 *Id.* at 443 (emphasis in original).

21 Similarly, the Seventh Circuit affirmed a dismissal with prejudice under § 1915(e)(2)(A)
22 where the plaintiff had not disclosed a savings account he controlled with a balance of over
23 \$32,000 at the time of his IFP application. *David v. Wal-Mart Stores, Inc.*, 669 Fed. App'x 793
24 (7th Cir. 2016). The court rejected the plaintiff's explanation that he regarded the account as off-
25 limits because he kept that money for his family in case of financial hardship. *Id.* at 794. The
26 plaintiff had used funds from the account to pay \$600 for a seminar and thus his claim that he
27 could not have used the money for the filing fee was disingenuous. *Id.* And, as in *Kennedy*, the
28 court emphasized that the plaintiff must disclose assets to the court and allow the court to assess

1 their availability to him. *Id.* at 794.

2 The Second Circuit reached the same conclusion in *Vann v. Comm’r of the N.Y.C. Dep’t*
3 *of Corr.*, 496 Fed. App’x 113 (2d Cir. 2012), affirming dismissal with prejudice where the
4 plaintiff made false statements and intentionally concealed income on his IFP application. *Id.* at
5 114. Plaintiff had omitted about \$2000 of income from the application. *Id.* at 115-16. The court
6 found irrelevant whether the plaintiff had spent the money before submitting his IFP application,
7 because the statute required him “to accurately and truthfully state his financial history and
8 assets,” and he had not done so. *Id.* at 116. Moreover, the plaintiff was “an experienced litigator
9 with extensive knowledge and familiarity with the in forma pauperis system.” *Id.* This fact
10 supported a finding of bad faith. *Id.* at 115 (“To determine whether a plaintiff has acted in bad
11 faith a court may consider a plaintiff’s familiarity with the in forma pauperis system and history
12 of litigation.”)

13 In a good number of cases finding bad faith, prisoner-plaintiffs have diverted funds in the
14 period leading up to their IFP application to others, usually family members. In *Roberts v. Beard*,
15 No. 15cv1044-WQH-RBM, 2019 U.S. Dist. LEXIS 120744 (S.D. Cal. Aug. 2, 2019), the plaintiff
16 had received a \$3000 settlement on October 21, 2014, transferred \$2000 to his sister on the same
17 day, and used the remainder to pay outstanding court filing fees. *Id.* at *3-12. On April 14, 2015,
18 the plaintiff submitted an IFP application indicating that he had not received any money from any
19 other sources in the prior twelve months. *Id.* When the defendants sought dismissal under §
20 1915(e)(A)(2), the plaintiff claimed he had forgotten about the \$3000 settlement, had not
21 benefitted from it, and no longer had the money at the time of his application. *Id.* at *10. The
22 court rejected these claims as not credible based on the plaintiff’s extensive litigation history and
23 familiarity with the IFP process. *Id.* at *7-11 (quoting *Vann*).

24 In *Cuoco v. U.S. Bureau of Prisons*, 328 F. Supp. 2d 463 (S.D.N.Y. 2004), the plaintiff
25 sought IFP status on October 27, 1998, despite accepting settlement offers in two other cases
26 totaling \$13,500 in the prior three weeks. *Id.* at 464-65. She stated on her IFP application that
27 she had enough money in an account in the community to pay the fee, but could not access the
28 money because prison officials were not allowing her to receive checks. *Id.* at 464. She did not

1 disclose the settlements. While her IFP application was pending, she asked that the settlement
2 checks be sent to her mother, and they were. *Id.* at 465. At the same time, the plaintiff prohibited
3 prison officials from receiving checks on her behalf. *Id.* She did not disclose to the court that she
4 had herself created the barrier keeping checks out of her prison account. *Id.* at 466. The court
5 found that plaintiff, who had obtained IFP status in 15 other suits, had diverted the funds to her
6 mother's address to perpetuate a negative balance in her prison account while misrepresenting to
7 the court that circumstances beyond her control made it unfeasible to have money deposited there.
8 *Id.* at 468-69. This manipulation of the IFP system, especially in combination with similar
9 conduct by the plaintiff in other cases, justified dismissal of her case with prejudice. *Id.* at 468-
10 69.

11 In *Richmond v. Housewright*, 101 F.R.D. 758 (D. Nev. 1984), the plaintiff did not reveal
12 \$2100 in income he had received during the 12 months preceding his IFP application for work
13 performed as an inmate law clerk and paid directly to the plaintiff's fiancée. Finding that the
14 plaintiff had "deliberately lied," the court dismissed the case. *Id.* at 759.

15 These cases reveal that the essential questions before the court are: (1) was plaintiff's
16 allegation of poverty untrue and, if so, (2) did plaintiff submit the untrue IFP application in bad
17 faith?

18 Accordingly, plaintiff is hereby ORDERED TO SHOW CAUSE, within 30 days of
19 service of this order, why this action should not be dismissed under 28 U.S.C. § 1915(e)(2).
20

21 Dated: August 23, 2024


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE